Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
R & G DISTRIBUTORS, INC.	)	File No. EB-01-IH-0017q
OCN# 6841	)	NAL/Acct. No. 200132080048
	)	FRN 0003-2716-16

FORFEITURE ORDER

Adopted: June 7, 2002 **Released:** June 11, 2002

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Order, we issue a monetary forfeiture against R&G Distributors, Inc. ("R&G") for willful violation of 47 C.F.R. § 52.15(f). The noted violation involves R&G's failure to report its number utilization and forecast data. Based upon our review of the facts and circumstances of this case, including R&G's response to our *Notice of Apparent Liability* ("*NAL*"),[1] we conclude that R&G is liable for a forfeiture in the amount of $6,000.

II. BACKGROUND

2. On April 24, 2001, the Chief, Enforcement Bureau, acting pursuant to delegated authority, issued the *NAL* to R&G, proposing a $6,000 forfeiture. We issued the *NAL* because it appeared that R&G had failed to report on its actual and forecast number usage by filing FCC Form 502, the North American Numbering Plan Numbering Resource Utilization/Forecast ("NRUF") Report that was due on September 15, 2000.[2] Carriers are required to report for each separate legal entity represented by an Operating Company Number ('OCN").[3] It appeared that R&G failed to file an NRUF report for one OCN, which was referenced in our *NAL*. We therefore determined that R&G had apparently violated section 52.15(f) of the Commission's rules, which requires U.S. carriers receiving numbering resources from the North American Numbering Plan Administrator ("NANPA"), a Pooling Administrator, or another

[1] *See R and G Distributors, Inc.*, 16 FCC Rcd 8665 (EB 2001).

[2] The NRUF reports are due on or before February 1 and on or before August 1 of each year. *See* 47 C.F.R. § 52.15(f)(6). However, we note that the deadline for filing reports due August 1, 2000 was extended to September 15, 2000. *Numbering Resource Optimization*, CC Docket No. 99-200, 15 FCC Rcd 17005 (2000).

[3] *See* 47 C.F.R. § 52.15(f)(3)(ii).

telecommunications carrier, to report semiannually on their actual and forecast number usage.[4]

3. R&G responded to the *NAL*, and does not contest the finding that it failed to comply with the reporting requirements of section 52.15(f). However, R&G requests reduction of the forfeiture penalty from $6,000 to $3,000. R&G argues that the Bureau failed to adequately explain or justify its proposed imposition of the upward adjustment of suggested base amount of the forfeiture penalty and that the forfeiture penalty proposed is disproportionate to the rule violation at issue.

III. DISCUSSION

4. The *NAL* explicitly states that the proposed forfeiture was assessed in accordance with applicable statutory provisions, the Commission's rules and the Commission's *Forfeiture Guidelines.*[5] Section 503(b) of the Act requires that, in examining R&G's response, we take into account the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.[6] R&G asserts that the *Forfeiture Guidelines* establish a base amount of $3,000 for failure to file required forms, but that we failed to adequately explain why we imposed the same upward adjustment assessed to carriers with much larger inventories of numbering resources that had also apparently failed to file the September 15, 2000 NRUF report. We disagree.

5. Our *NAL* emphasized the critical importance of consistent and accurate reporting of number utilization and forecast data.[7] The *NAL* explained that we imposed an upward adjustment based upon the potential harm to the Commission's numbering administration and optimization caused by non-compliance with section 52.15(f). The amount of the upward adjustment took into account R&G's inventory of numbering resources, which encompasses multiple NXX codes.[8] Under Section 503(b)(2)(D) of the Act and the *Forfeiture Guidelines*, the Bureau has broad flexibility to determine the appropriate forfeiture.[9] In this regard, the upward adjustment creates an incentive for carriers to report on their number utilization and forecast data in addition to recognizing the potential harm to numbering administration and optimization when carriers do not comply with section 52.15(f).[10] Although we generally proposed higher forfeiture amounts for carriers with a greater amount of numbering resources at

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[4] *Numbering Resource Optimization,* Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 99-200, 15 FCC Rcd 7574 (2000)("*NRO Order*"); *recon. and clarification in part*, Second Report and Order, Order on Reconsideration in CC Docket 96-98 and CC Docket 99-200, and Second Further Notice of Proposed Rulemaking in CC Docket 99-200, 16 FCC Rcd 306 (2000)("*NRO Recon. Order*").

[5] 47 U.S.C. § 503(b); 47 C.F.R. § 1.80; *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999)("*Forfeiture Guidelines*")(codified at 47 C.F.R. § 1.80(b)(4) Note).

[6] 47 C.F.R. § 503(b)(2)(D).

[7] *Id*.

[8] *R and G Distributors,* 16 FCC Rcd at 8667.

[9] 47 U.S.C. § 503(b)(2)(D). *See Forfeiture Guidelines*, 12 FCC Rcd at 17100 (1997). *See, e.g., SBC Communications Inc.*, 16 FCC Rcd 12306 (2001).

[10] *See* 47 C.F.R. § 1.80(b)(4) Note.

issue, we are not required to assess a different forfeiture based on each individual carrier's number inventory. Thus, we find that the calculation of the forfeiture penalty is reasonable and appropriate. R&G's citation to precedent imposing a lower forfeiture penalty for a paging carrier's unlicensed operation over an extended period of time does not compel a different result.[11] In addition, we decline to reduce the forfeiture amount based on R&G's argument that it is an intermediate carrier and thus was required to report only utilization data. We have reviewed R&G's response in light of the statutory factors set forth above, and find that R&G has not justified reduction of the proposed forfeiture. Accordingly, we affirm the forfeiture.

IV. ORDERING CLAUSES

6. Accordingly, IT IS ORDERED, pursuant to 47 U.S.C. § 503(b), and 47 C.F.R. § 0.111, 0.311 and 1.80, that R&G Distribution FORFEIT to the United States the sum of six thousand dollars ($6,000) for willfully violating the Commission's rules that require U.S. carriers to report actual and forecast number usage.

7. Payment of the forfeiture may be made by mailing a check or money order, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482, within 30 days of the release of this Forfeiture Order.[12] The payment MUST INCLUDE the FCC Registration Number (FRN) referenced above and should note the NAL/Acct. No. referenced above. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to 47 U.S.C. § 504. A request for payment of the full amount of this Forfeiture Order under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.[13]

8. IT IS FURTHER ORDERED that a copy of this Forfeiture Order shall be sent by Certified Mail/Return Receipt Requested, to Eziquel DeLa Torre, R&G Distributors, Inc., 1665 W. 68th Street, Suite 201, Hialeah, FL 33014, with a copy to its counsel, Henry A. Solomon, Esq., Garvey, Schubert & Barer, 1000 Potomac Street, N.W., Washington, DC 20007.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

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[11] *Teton Communications Incorporated*, 10 FCC Rcd 8832 (WTB 1995).

[12] *See* 47 C.F.R. § 1.80(h).

[13] *See* 47 C.F.R. § 1.1914.